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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/693,346

10/24/2003

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EXAMINER

ALAM, FAYYAZ

ART UNIT

PAPER NUMBER

2618

MAIL DATE

DELIVERY MODE

07/09/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<p align="center"><b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b></p>	<p><b>Application No.</b> 10/693,346</p>	<p><b>Applicant(s)</b> ISLAM ET AL.</p>	
	<p><b>Examiner</b> FAYYAZ ALAM</p>	<p><b>Art Unit</b> 2618</p>	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 16 June 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See continuation.  
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Edward Urban/  
Supervisory Patent Examiner, Art Unit 2618

Applicant argues on pgs. 18-28 with regards to claims 1-6, 11-17, 23-29, and 36-37 that the relied upon prior art does not teach Scanning [Via The Cellular RF Transceiver], A First Energy-To-Interference Ratio Of The First Cellular Base Station Transceiver System And Measuring, From The Scanning [Via The Cellular RF Transceiver], A Second Energy-To-Interference Ratio Of The Second Cellular Base Station Transceiver System As The Examiner Argues. Further, does not teach, if, identified at the mobile telephone, the first energy-to-interference ratio is greater than a minimum threshold, even if the first energy-to-interference ratio is less than the second energy-to-interference ratio.

Examiner respectfully disagrees.

Feder discloses selecting communication network based not on signal quality but based on the type of communication network preference due to quality of service provided, higher data rate. Therefore, according to Feder a 3G network can be selected even though the signal quality of the 802.11 network is better. It is true that networks disclosed by Feder are not exclusively cellular or heterogeneous networks, but it would be obvious to apply the same concept to cellular technology, where both a new cellular network and a legacy cellular network are deployed. In light of Feder one would choose the new cellular network even though the signal quality is better than the legacy cellular network in order provide better quality of service, such as higher data rate.

Applicant argues on pgs. 28-32 with regards to claim 7-10, 18-22, 30-35, and 38-39 that the relied upon prior art does not teach the step of identifying, at the mobile station, that at least a second cellular base station transceiver identified from the scanning fails to provide the 3G or greater communication service of the mobile station but provides a communication that is less than the 3G or greater communication service. Further, does not teach, the steps of producing and sending a list of handoff candidate identifiers to a serving cellular base station transceiver system which...excludes a second identifier for the second cellular base station transceiver system based on identifying that the second cellular base station transceiver system fails to produce the 3G or greater communication service.

Examiner respectfully disagrees.

Feder discloses a plurality of rule tables that perform network selection based on user preference or service provider preference. Therefore, identification or detection of the 3G or 802.11 or any other network would be inherent in order to apply the preference rule table. For instance, the identification of the 802.11 network would indicate an identification of a second base station that fails to provide 3G or greater communication service in the presence of a 3G network. In addition, it would be obvious in view of Feder and Kingdon to produce and send a list of handoff candidate identifiers that excludes an identifier of an 802.11 network in the presence of 3G network since it is not a preferred network according to the rules table. Therefore, a mobile would not be handed off to a network that is not desired by the user or the service provider due to quality of service, data rate, etc.

In response to applicant's argument that the combination of references would be inoperative, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).